

Sitka Tribe of Alaska

Tribal Government for Sitka, Alaska



March 9, 2011

VIA U.S. MAIL

Mary Milam
Department of Interior
1849 C Street NW MS 4141-MIB
Washington D.C. 20240

RE: Comments to Department of Interior Consultation Policy

Dear Ms. Milam,

Sitka Tribe of Alaska is the federally recognized tribal government responsible to protect and promote the health, education, economic and general welfare of our 4,100 tribal citizens. I am writing to provide comments to the draft Tribal Consultation Policy sent to the Sitka Tribe of Alaska by the Secretary of Interior Ken Salazar on January 14, 2011.

We respectfully request that the Secretary of the Interior request the White House Administration provide more direction on what each policy for the federal agencies should entail. The way it is being done is each agency is preparing a draft policy, sending it out to tribes to review and provide comment on. The policies that Tribes are receiving do not have consistency across the agencies. And even within a particular agency like the Department of Interior, some of the bureaus/offices are starting to move forward on establishing a consultation policy prior to the overarching policy that they will be bound by is completed. For example, the Department of Interior has sent the draft policy out to tribes asking Tribes to review and provide comment. Fish and Wildlife, also is moving forward working to establish a consultation policy even though the overall DOI policy has not been completed.

Second, in November 2009 the National Congress of American Indians providing recommendations to Secretary Salazar that we feel are solid recommendations for drafting the Department of Interior Consultation Policy so will reiterate those and request he ensure the final policy adheres to those recommendations.

We ask that the Secretary ensure the policy: 1) refocus on substantive goals while respecting Tribal Sovereignty and the Federal Trust responsibility; 2) develop accountability and tracking provisions; 3) focus on solutions, bring decision makers to Tribal consultation and engage in real dialogue; 4) ensure interagency cooperation and 5) create opportunities for both formal consultation on developed proposals and early informal scoping on tribal issues. Keeping the NCAI recommendations in mind, we reviewed the policy and have the following specific comments.

In Section I, the preamble, there is a reference to a companion secretarial order – there was no secretarial order that came with the draft policy. This would be important to see.

In Section II, the guiding principles, paragraph two, the principles state that decision makers have to be at consultations but then in that same sentence states that “in the event that the decision makers are not present at the consultation meeting...” This does not follow recommendation #3 from NCAI – therefore we request it be revised to ensure decision makers will be at the consultations or the policy ensure procedures/processes be established that will ensure the issues get from the staff person to the appropriate decision maker.

In Section III, the definitions, there are two decisions we will comment on. The definition of “departmental action with tribal implications” is a bit vague. In particular, the phrase “substantial direct effect” can be open to many interpretations. Also, who determines when there is a substantial direct effect? It leaves a lot of discretion and we would hope that could either be defined or the word substantial removed. In that same definition in the last sentence, there is the phrase “matters undertaken in accordance with an administrative or judicial order.” Can you please provide examples of that or further clarify what that means? In the definitions section H. Tribal Liaison Official, we want to ensure that American Indian/Alaska Native employees of the federal government are not forced in to these Liaison positions. We had an instance in Alaska recently, where one of our Tribal citizens was told she either needed to accept a Liaison position or she would be terminated. She was doing a great job in the position she had and preferred to stay in that position – but was eventually terminated by the federal agency for not agreeing to accept that re-assignment. These positions should not be used in such a way. This doesn’t relate so much to the definition – we don’t have any comments about the definition itself, but is something we wanted to comment about so when your staff selects individuals to fill these positions that you ensure people are not forced to accept those positions.

In section V, Communication, the last paragraph indicates “The Department recognizes the value of communicating through a regular gathering of Indian Tribes which are meant to continue the discussion on improving consultation practices...” Can you please clarify what you mean by “regular gathering of Indian Tribes”?

In Section VI, Accountability and reporting, we feel that section would more appropriately be titled Accountability in Reporting. It doesn’t provide for anything other than accountability in reporting. This policy asks people to assess their own performance on conducting consultation. This is a concern to us. Please ensure there is accountability by the federal agencies for not adhering to the consultation policy.

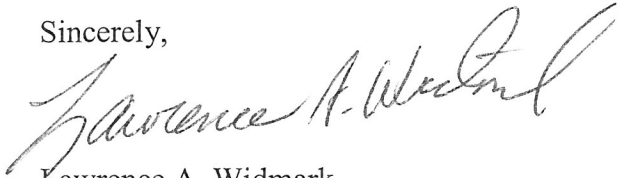
In Section VII, in the first paragraph, third sentence, we request you remove the words “may consider” and replace that with “will” and remove the “ing” from soliciting. So the sentence reads “The department will solicit Indian Tribes’ evaluation of consultation practices. In the second paragraph, first sentence we ask that you strike the word “open” and replace it with “available.” That sentence would read “The Department’s Bureaus and Offices will be available to consultation opportunities initiated by Indian Tribes...” We ask that you insert “with Indian Tribes in the next sentence between the words Communication and outside. The sentence would read “Communication with Indian Tribes outside of consultation is encouraged...” Finally the last paragraph of this section doesn’t mean a lot because of the word “encouraged” being used.

It leaves it to the Bureau office leaders to do this and does not provide any repercussions if they do not.

In Section VIII, Part A, we asked that you modify the date from 30 days to 45 days. In Part D, number 2, we asked that you strike in the second paragraph second sentence, the words "to the greatest extent feasible." It would read "The Bureau or Office should work with Indian tribes to structure a process which considers specific Indian Tribal structures, traditional needs, and schedules of the Tribes..." In that same section, paragraph three, bullet two, third sentence, we ask that you strike "to the extent possible." It would read "In each instance, the composition of the Task Force shall be collaboratively determined by the Tribes, provided that the Task Force shall be a process open to all Tribes and represent a cross-section of Tribal interests with respect to the matter at issue." Finally, in the same section, same part, number 2, paragraph four, in the last sentence, we ask that you define "reasonable time period." What would be considered reasonable? It will be important for Tribes to know the reasonable time period in which a Tribe should respond.

That concludes our comments. We look forward to receiving a response to our comment letter and clarifications for issues we have identified need to be clarified. If you have any questions, please contact Lisa Gassman, General Manager.

Sincerely,

A handwritten signature in cursive script, reading "Lawrence A. Widmark". The signature is written in dark ink and is positioned above the printed name.

Lawrence A. Widmark
Tribal Council Chairman